

MICHAEL D. FORMBY 5199-0  
JOHN O'KANE, JR. 4280-0  
MICHAEL J. NAKANO 6940-0

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

FEB 14 2005

at Honolulu and \_\_\_\_\_  
MAJESTY A.Y.H. CHINN, CLERK

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Attorneys for Limitation Plaintiffs  
CAPTAIN ANDY'S SAILING, INC.  
and EVANS PACIFIC, LTD.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

In the Matter	)	CIVIL NO.CV05-00017 HG/LEK
	)	(Admiralty)
of	)	
	)	FIRST AMENDED
The Complaint of CAPTAIN ANDY'S	)	LETTER OF UNDERTAKING;
SAILING, INC., a Hawaii corporation,	)	CERTIFICATE OF SERVICE
as pro hac vice owner, and EVANS	)	
PACIFIC, LTD., a Hawaii corporation,	)	
as owner, of M/V SPIRIT OF KAUAI,	)	
O.N. 995776, for exoneration from or	)	
limitation of liability.	)	
	)	
	)	
	)	
	)	
	)	

FIRST AMENDED  
LETTER OF UNDERTAKING

On or about July 20, 2004, Matthew Isham, dive instructor, Dennis Claypool, student diver, Scott Claypool, diver, and others participated in scuba diving from M/V BLUE DOLPHIN. During the dive, Matthew Isham and Dennis Claypool came into contact with the propeller of the vessel M/V SPIRIT OF KAUAI and sustained injuries. M/V SPIRIT OF KAUAI did not sustain any damage. CAPTAIN ANDY'S SAILING, INC. and EVANS PACIFIC, LTD., (hereafter collectively "Limitation Plaintiffs"), as owner pro hac vice and owner, respectively, of the vessel M/V SPIRIT OF KAUAI, have filed a Complaint for Exoneration from or Limitation of Liability pursuant to 46 U.S.C. § 181 et seq.

Limitation Plaintiffs hereby deposit appropriate security in the amount of the value of the vessel M/V SPIRIT OF KAUAI, at the close of the incident, with the Court. Continental Insurance Company hereby tenders its letter of undertaking to the Court as adequate and approved security for the value of vessel M/V SPIRIT OF KAUAI pursuant to Supplemental Rule F(1), Federal Rules of Civil Procedure.

Continental Insurance Company hereby agrees:

1. To file, or cause to be filed, upon demand of the Clerk or of any Claimant in the above-captioned proceeding, a claim of ownership of the vessel M/V

SPIRIT OF KAUAI for any claim made by any Claimant in the United States District Court, District of Hawaii, respecting the above-referenced incident on July 20, 2004, whether or not the vessel is within the jurisdiction of the Court at the time, and without raising any point or defense as to her absence from said jurisdiction;

2. In the event a final decree or judgment (after appeal, if any) be entered in favor of one or all of the Claimants in the above-referenced action, then the undersigned agrees to pay and satisfy such final decree or judgment up to but not exceeding the sum of Four Hundred Thousand Dollars and Zero Cents (\$400,000.00), with interest thereon at a rate of six percent (6%) per annum from the date hereof, or any lesser amount decreed by the Court or agreed to in any settlement between the parties without final decree being rendered;

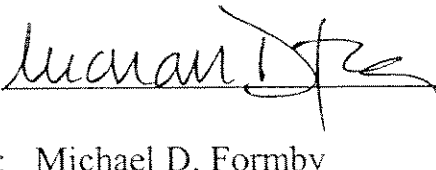
3. This letter is to be binding whether or not the vessel M/V SPIRIT OF KAUAI is lost at sea, or not lost, in port or not in port; and is given without prejudice to all rights and defenses which the vessel and her owners or claimants may have, none of which is to be regarded as waived.

It is understood and agreed that signing of this letter of undertaking on behalf of CAPTAIN ANDY'S SAILING, INC., EVANS PACIFIC, LTD. and the vessel M/V SPIRIT OF KAUAI is not to be construed as binding upon Frame Formby & O'Kane, AAL, ALC, their attorneys, corporate officers, directors or shareholders,

but instead shall be binding only upon the principal, Continental Insurance Company.

DATED: Honolulu, Hawaii, February 14<sup>th</sup>, 2005.

PRINCIPAL: Continental Insurance Company

By: 

Name: Michael D. Formby

Title: Attorney-In-Fact for the  
Principal for the above  
limited purpose only as  
per written authority received  
via facsimile on the 14th of  
February, 2005, from Continental  
Insurance Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing  
were served as noted on the following persons at the addresses indicated below on  
this 14th day of February, 2005:

HAROLD G. HOPPE, ESQ. Pacific Guardian Center, Makai Tower 733 Bishop Street, Suite 2300 Honolulu, Hawaii 96813	Hand delivered
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JOHN HILLSMAN, ESQ. McGUINN, HILLSMAN & PALEFSKY 535 Pacific Avenue San Francisco, CA 94133	Mailed
--	--------

Attorneys for DENNIS CLAYPOOL, SHERYL  
CLAYPOOL, individually and as Guardian  
Ad Litem for KRISTEN CLAYPOOL, a minor,  
SCOTT CLAYPOOL, and KRISTIN CLAYPOOL

EVELYN BLACK, ESQ. Goodsill Anderson Quinn & Stifel Alii Place, Suite 1800 1099 Alakea Street Honolulu, Hawaii 96813	Hand delivered
--	----------------

Attorney for BLUE DOLPHIN CHARTERS, LTD.

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MICHELE NELSON BASS, ESQ.  
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Mailed/faxed

Attorneys for MATTHEW ISHAM,  
ROXANNE BEST ISHAM AND HAYDEN ISHAM

DATED: Honolulu, Hawaii, February 14, 2005.

FRAME FORMBY & O'KANE

  
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MICHAEL J. NAKANO  
Attorneys for Limitation Plaintiffs  
CAPTAIN ANDY'S SAILING, INC.  
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